

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 11. VETERINARY MEDICAL EXAMINING BOARD

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R3-11-101	Amend
R3-11-102	Amend
R3-11-103	Amend
R3-11-105	Amend
R3-11-107	Amend
R3-11-108	Amend
R3-11-109	New Section
R3-11-202	Repeal
R3-11-302	Amend
R3-11-303	Amend
R3-11-304	Amend
R3-11-305	Amend
R3-11-401	Amend
R3-11-402	Amend
R3-11-403	Amend
R3-11-404	Repeal
R3-11-405	Amend
R3-11-501	Repeal
R3-11-501	New Section
R3-11-502	Repeal
R3-11-502	New Section
R3-11-503	Repeal
R3-11-603	Amend
R3-11-604	Amend
R3-11-605	Amend
R3-11-607	Amend
R3-11-701	Repeal
R3-11-701	New Section
R3-11-702	Repeal
R3-11-702	New Section
R3-11-703	Repeal
R3-11-703	New Section
R3-11-704	Repeal

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R3-11-704	New Section
R3-11-705	Amend
R3-11-706	Amend
R3-11-801	Amend
R3-11-802	Amend
R3-11-803	Amend
R3-11-804	Repeal
R3-11-805	Amend
R3-11-806	Repeal
R3-11-807	Amend
R3-11-901	Amend
R3-11-902	Amend
R3-11-903	Amend
R3-11-904	Amend
R3-11-905	Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. § 32-2204(B), 32-2207(8), 32-2207(9)

Implementing statutes: A.R.S. §§ 32-2204(A), 32-2207(2), 32-2207(3), 32-2207(6), 32-2207(10), 32-2213(A)(7), 32-1-2214, 32-2215, 32-2216, 32-2217.01, 32-2218, 32-2232(12), 32-2234, 32-2237, 32-2242 through 32-2250, 32-2271, 32-2272, 32-2275, 32-2281

3. A list of previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 5 A.A.R. 4372, November 19, 1999

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Louise Battaglia, Executive Director

Address: Veterinary Medical Examining Board
1400 W. Washington, Suite 230
Phoenix, Arizona 85007

Telephone: (602) 542-3095

Fax: (602) 542-3093

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The Veterinary Medical Board (Board) is proposing rules that contain clear standards of practice for veterinarians and clarify the ethical standards for veterinarians in Article 5. The standards for a veterinary medical premises in Article 7 are also being updated. Additionally, the Board is making changes to Articles 1, Definitions; 2, Application and Examination for Licensure; 3, Temporary Permittees; 4, Continuing Education Requirements; 6, Veterinary Technicians; 8, Drug Dispensing; and 9, Investigations and Hearings as stated in its 5-Year Review Report that was approved by the Governor's Regulatory Review Council in December 1998. Many of these changes include changing passive to active voice and clarifying subjective standards so that the rules are enforceable. Terms and phrases used in the rules are being amended to reflect changes in their use and to conform to current rulemaking style and format requirements. Additional definitions are also being added to clarify terms or phrases and afford consistent interpretation of the rules. A provision has been added for the ombudsman-citizens aide. Requirements for renewals are being amended. The Board is adding the penalty fee stated in A.R.S. § 32-2272(E) for failure to timely pay the renewal fee for a veterinary medical premises license. The Board is repealing, amending, or adding any other Sections as necessary.

6. A showing of good cause why the rules are necessary to promote a statewide interest if the rule will diminish a previous grant of a political subdivision of the state:

Not applicable

7. A reference to any study the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

None

8. The preliminary summary of the economic, small business, and consumer impact:

A. Objective of the rulemaking

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The Veterinary Medical Board (Board) is proposing rules that contain clear standards of practice for veterinarians and clarify the ethical standards for veterinarians in Article 5. The standards for a veterinary medical premises in Article 7 are also being updated. Additionally, the Board is making changes to Articles 1, Definitions; 2, Application and Examination for Licensure; 3, Temporary Permittees; 4, Continuing Education Requirements; 6, Veterinary Technicians; 8, Drug Dispensing; and 9, Investigations and Hearings as stated in its 5-Year-Review Report that was approved by the Governor's Regulatory Review Council in December 1998. Many of these changes include changing passive to active voice and clarifying subjective standards so that the rules are enforceable. Terms and phrases used in the rules are being amended to reflect changes in their use and to conform to current rulemaking style and format requirements. Additional definitions are also being added to clarify terms or phrases and afford consistent interpretation of the rules. A provision has been added for the ombudsman-citizens aide. Requirements for renewals are being amended. The Board is adding the penalty fee stated in A.R.S. § 32-2272(E) for failure to timely pay the renewal fee for a veterinary medical premises license. The Board is repealing, amending, or adding any other Sections as necessary.

B. Identification of those affected by the rulemaking

The costs associated with implementation of the rules will be borne by the Board, licensed veterinarians, applicants for veterinary licenses, temporary permittees, certified veterinary technicians, and veterinary medical premises licensees bear the costs of complying with the rules.

Beneficiaries of the rules include licensed veterinarians, applicants for veterinary medical premises licenses, veterinary medical premises licensees, temporary permittees, certified veterinary technicians, consumers of veterinary medical services, and animal patients.

C. Summary of the economic, small business, and consumer impact statement

The Secretary of State's cost for publishing the rules is minimal.

The cost for review by the Governor's Regulatory Review Council is minimal.

The costs to the Board are moderate for promulgation of the rules. The Board's costs to administer and enforce the rules is substantial.

The definitions benefit an applicant for a veterinary medical premises license by providing the applicant with consistency and understanding of the rules. They do not increase costs to any of the different types of applicants or licensees.

Because the standards for veterinary medical premises in the proposed rules are currently required by the Board in its inspection report, they add minimal costs to an applicant for a veterinary medical premises license and a licensee. Such minimal costs include requiring nonporous materials for floors, tables, countertops, sinks, and fixtures within a veterinary medical premises; ensuring water is provided capable of achieving temperatures from 32°F to 212°F on a veterinary medical premises; providing storage space for biohazardous waste and refrigerated storage space large enough for all deceased animals on the veterinary medical premises; and providing storage space for biohazardous waste separate from storage space used for the transportation of deceased animals on a mobile clinic.

A veterinary medical premises will not incur additional costs because of the penalty fee in proposed R3-11-605. The Board is already authorized by A.R.S. § 32-2272(E) to collect and has been collecting this fee. Veterinary medical premises licensees obtain a benefit from proposed R3-11-605 because the rule permits the licensee with the discretion to delegate tasks to a certified veterinary technician while under a licensed veterinarian's direction, supervision, and control.

The proposed rules in Article 4 benefit a licensed veterinarian by providing the licensee with flexibility to complete continuing education requirements by either presenting or completing a specified number of hours of continuing education.

The proposed rules in R3-11-501, Ethical Standards, clarify the current rules and should not add any economic costs. Proposed R3-11-604 benefits a veterinary technician applicant by allowing the applicant to use an examination that was passed within 5 years of application to qualify for certification.

The principle beneficiary of the proposed rules is the consumer of veterinary medical services, including the animal patient. The proposed rules clarify requirements to protect the health and safety of the animal patient.

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9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Louise Battaglia, Executive Director
Address: Veterinary Medical Examining Board
1400 W. Washington, Suite 230
Phoenix, Arizona 85007
Telephone: (602) 542-3095
Fax: (602) 542-3093

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule; or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Oral proceedings will be conducted by the Board at the following location in the state for the purpose of taking oral and written testimony on the proposed rule from members of the public.

Date: June 1, 2000
Time: 10:00 a.m.
Location: 1400 W. Washington, Room 240
Phoenix, Arizona 85007

The public record on the proposed rulemaking will close at 5:00 p.m. on June 1, 2000.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 11. VETERINARY MEDICAL EXAMINING BOARD

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R3-11-202.	Time, Place, and Date of Examination Repealed

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ARTICLE 5. ~~PROFESSIONAL ETHICS AND STANDARDS OF PRACTICE~~

Section
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R3-11-501. Ethical Standards
~~R3-11-502.~~ ~~Discharge of Patients~~
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R3-11-702. Equipment and Supplies
~~R3-11-703.~~ ~~Equipment Standards~~
R3-11-703. Maintenance Standards for a Veterinary Medical Premises
~~R3-11-704.~~ ~~Housekeeping Standards~~
R3-11-704. Surgical Equipment
R3-11-705. Mobile Clinics
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ARTICLE 8. DRUG DISPENSING

Section
R3-11-801. Notification That Prescription-only Drugs or Controlled Substances May Be Available at a Pharmacy
R3-11-802. Labeling Requirements
R3-11-803. Packaging Requirements
R3-11-804. ~~Record Keeping~~ Repealed
R3-11-805. Storage
R3-11-806. ~~Access~~ Repealed
R3-11-807. Dispensing Drugs

ARTICLE 9. INVESTIGATIONS AND HEARINGS

Section
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ARTICLE 1. GENERAL PROVISIONS

R3-11-101. Definitions

The following definitions apply to this Chapter unless otherwise specified:

1. "Animal owner" means an individual who has all or part of the legal title to an animal or an individual designated by the animal owner to act on the animal owner's behalf.
2. "Compartment" means the enclosure provided for the containment of an animal.

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3. "Continuing education" means completing or presenting a workshop, seminar, lecture, conference, class, or instruction related to the practice of veterinary medicine.
4. "Controlled substance" means the same as in A.R.S. § 32-2201.
5. "Credit hour" means 1 clock hour of participation in continuing education.
- ~~A.~~ "Direct and personal instruction, control, or supervision", pursuant to A.R.S. § 32-2211(4), pertaining to veterinary students, shall mean on the premise instruction control, or supervision.
- ~~B.~~ Recognized veterinary colleges. The qualification requirements of A.R.S. §§ 32-2215(A)(2) and 32-2216(A) and that part of the definition of "Veterinary College" pursuant to A.R.S. § 32-2201(15) which requires conformity to the standards required for accreditation by the American Veterinary Medical Association, shall mean:
 1. Actual accreditation by the American Veterinary Medical Association of the college of veterinary medicine from which the applicant received the degree, or
 2. If the American Veterinary Medical Association had not accredited the college of veterinary medicine at the time the applicant graduated, that the standards of the applicant's college of veterinary medicine conformed to those standards required by the American Veterinary Medical Association for accreditation in the year in which the applicant received that degree. In all instances, the burden of showing such conformity shall lie with the applicant.
6. "Direction, supervision, and control" means:
 - a. Pertaining to veterinary technicians, the written or oral instructions of a veterinarian responsible for an animal,
 - b. Pertaining to temporary permittees, the same as direct and personal instruction, control, or supervision as stated in A.R.S. § 32-2216(B).
7. "Disciplinary action" means a proceeding brought by the Board under A.R.S. Title 32, Chapter 21, Articles 3, 4, or 6; 3 A.A.C. 11, Article 9, or a state licensing agency or board.
8. "Dispense" means the same as in A.R.S. § 32-2281(E).
9. "Hours of operation" means the specific time during which a licensed veterinary medical premises is open to the public for business.
10. "Housed" means an animal is maintained in a compartment.
11. "Livestock" means the same as the definition of livestock and ratites in A.R.S. § 3-1201.
12. "Medication" means an over-the-counter drug defined in A.R.S. § 32-1901, prescription-only drug, prescription-only device defined in A.R.S. § 32-1901, or controlled substance.
- ~~C.~~ 13. A "mobile clinic" "Mobile clinic" is means a self-contained trailer, van, or mobile home not attached to the ground designed to function as a self-contained clinic.
- ~~D.~~ 14. A "mobile unit" "Mobile unit" is means a vehicle from which out-patient veterinary medical services are delivered to temporary sites and which that is not designed to function as a self-contained clinic.
15. "Noncontact continuing education" means any of the following related to the practice of veterinary medicine:
 - a. Reviewing video tapes;
 - b. Listening to audio tapes; or
 - c. Reading, editing, or writing professional books, articles in peer review journals, or articles on the Internet.
- ~~F.~~ 16. "Over-the-counter drug" means a drug that does not bear on its label the legend "Caution: Federal Law Prohibits Dispensing Without Prescription." the same as the definition in A.R.S. § 32-1901.
- ~~G.~~ "Direction, supervision, and control" pertaining to veterinary technicians, for the purposes of A.R.S. § 32-2241, shall mean that degree of control by the veterinarian having actual charge of the case or animal which will ensure that the activities of the veterinary technician are within the scope of the orders, assignments, or prescriptions of the veterinarian;
17. "Party" means the same as the definition in A.R.S. § 41-1001.
18. "Personnel" means any individual, licensed by the Board or unlicensed, who works on a veterinary medical premises.
19. "Physical plant" means a building housing a veterinary medical premise or licensed areas within a building, including the architectural, structural, mechanical, electrical, plumbing, and fire protection elements of a building.
- ~~E.~~ 20. "Prescription-only drug" means any drug, other than a controlled substance required by the federal act to bear on its label the legend "Caution: Federal Law Prohibits Dispensing Without Prescription." the same as in A.R.S. § 32-1901.
21. "Present" means to educate, instruct, train, or teach continuing education.
22. "Responsible veterinarian" means the same as in A.R.S. § 32-2201.
23. "Sanitize" means to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
24. "Veterinary medical premise" means the physical plant licensed by the Board on which veterinary medical services will be performed.
25. "Veterinary medical services" means performing any of the acts in A.R.S. § 32-2201(16).

R3-11-102. Board Meetings

- ~~A.~~ The annual meeting of the Board shall be held in June of each year.
- ~~B.~~ The date, time, and place of the annual meeting of the Board shall be made available to the public at the office of the Arizona State Veterinary Medical Examining Board at least 20 days prior to the meeting. All special meetings of the Board,

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shall be set at the direction of the Chairman, who shall instruct the Executive Director of the Board to notify each Board member of the meeting date, time, and place at least five days prior to the meeting.

- A. The Board shall hold an annual meeting in June of each year.
- B. The Board shall make the date, time, and place of an annual meeting available to the public at least 20 days before the date of the annual meeting. The Chair shall set a special meeting of the Board and instruct the executive director of the Board to notify each Board member of the special meeting date, time, and place at least 5 days before the special meeting date.

R3-11-103. Renewal of Veterinary License

- A. Pursuant to A.R.S. § 32-2218, all licenses issued under the provisions of Chapter 21, Title 32, Arizona Revised Statutes shall expire on December 31 of every even-numbered year unless renewed.
- B. All licensees shall submit renewal fees and up-to-date information concerning current practice status, location of practice, correct home and business mailing addresses prior to February 1, of every odd-numbered year on a renewal application form provided and mailed to all licensees by the Board.
- C. All licensees shall meet the continuing education requirements of Article 4 of these rules as a condition of renewal of their licenses.
- D. Failure to submit the appropriate license renewal fee or an affidavit of attendance in continuing education programs or courses prior to February 1 of every odd-numbered year shall result in automatic forfeiture of all privileges and rights extended by said license and licensee shall immediately cease and desist from engaging further in the practice of veterinary medicine until compliance with the provisions of A.R.S. § 32-2218 and Article 4 of the rules has been fully met.
- E. Continued veterinary practice by a licensee whose license has been forfeited for failure to renew or affirm attendance of continuing education programs or courses shall constitute "probable cause" of criminal violations of A.R.S. § 32-2238(A)(4) for purposes of referral to the County Attorney's Office or the Office of the Attorney General for criminal prosecution, injunctive relief or any other action warranted under the circumstances.
- A. According to A.R.S. § 32-2218, a license issued under the provisions of Chapter 21, Title 32, Arizona Revised Statutes expires on December 31 of every even-numbered year unless renewed.
- B. A licensee shall meet the continuing education requirements of Article 4 of these rules as a condition of renewal of a license.
- C. No later than February 1 of every odd-numbered year, a licensee shall submit to the Board:
 - 1. A renewal form, provided by the Board, that is signed and dated by the applicant and contains:
 - a. The licensee's name, social security number, correct home and business mailing addresses, location of veterinary practice, and telephone number; and
 - b. Current information concerning the license status, including whether any disciplinary action has been taken by the Board;
 - 2. The renewal fee required by the Board; and
 - 3. A list of continuing education completed by the licensee that meets the requirements in Article 4 of these rules.
- D. If a licensee fails to submit the license renewal form, renewal fee, or list of continuing education by February 1 of every odd-numbered year, the licensee shall immediately stop engaging in the practice of veterinary medicine until the licensee complies with the requirements in A.R.S. § 32-2218 and these rules.
- E. Continued veterinary practice by a licensee who fails to comply with continuing education requirements or fails to submit a renewal application or fee shall constitute "probable cause" of criminal violations of A.R.S. § 32-2238(A)(4) for purposes of referral to the County Attorney's Office or the Office of the Attorney General for criminal prosecution, injunctive relief, or any other action provided by law.

R3-11-105. Fees

- A. No Change
- B. No Change
- C. Veterinary medical premises fees are as follows:
 - 1. No Change
 - 2. No Change
 - 3. No Change
 - 4. No Change
 - 5. Penalty fee under A.R.S. § 32-2272(E) \$100.00
- D. No Change
- E. No Change
- F. No Change
- G. No Change
- H. No Change

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R3-11-107. Registering with Board Residence and Practice Addresses

- A.** Within 20 days after the issuance of a license, ~~the~~ a licensee shall provide written notice to the Board of all residence and practice addresses.
- B.** ~~Thereafter, the~~ A licensee shall provide written notice to the Board within 20 days ~~of any~~ after a change of residence or practice addresses.

R3-11-108. Timeframes for Licensure, Certification, and Permit Approvals

- A.** No Change
- B.** No Change
- C.** No Change
- D.** No Change
- E.** No Change
1. No Change
2. Take the ~~dispensing opticians~~ state, national, or clinical competency veterinary examination or veterinary technician examination.
- F.** No Change
- G.** No Change

R3-11-109. Office of the Ombudsman-Citizens Aide

Upon request of an individual, the Board shall provide the name, address, and telephone number of the ombudsman-citizen aide to the individual.

ARTICLE 2. APPLICATION AND EXAMINATION FOR LICENSURE

R3-11-202. Time, Place, and Date of Examination Repealed

- A.** ~~Examinations of applicants for licensure as veterinarians in Arizona shall be held semi-annually at a time, place, and date to be provided in writing to all applicants that have been accepted and paid their fees not less than 20 days before the examination.~~
- B.** ~~All applications for the state examination shall be received in the office of the Board no later than seven days prior to the scheduled examination date and shall be accompanied by the examination fees. The fees shall be submitted only by certified check or money order.~~

ARTICLE 3. TEMPORARY PERMITTEES

R3-11-302. Termination of Employment

A temporary permittee and the temporary permittee's employer shall ~~immediately~~ notify the Board in writing within 10 days from the date any time the permit holder ceases ~~employment being employed by a veterinarian who is providing "direct and personal instruction, control, or supervision."~~ direction, supervision, and control.

R3-11-303. Multiple Employment

A temporary permittee who is working under the ~~"direct and personal instruction, control or supervision"~~ direction, supervision, and control of more than one licensed veterinarian shall ~~immediately~~ notify the Board within 24 hours of a change in a ~~each~~ supervising veterinarian.

R3-11-304. Extension of Temporary Permits

~~Pursuant to the provisions of The Board shall extend a temporary permit as allowed by A.R.S. § 32-2216(B), and its requirements, a temporary permit shall be extended only if the temporary permittee has applied submits the application in R.-11-301, is qualified, qualifies under A.R.S. § 32-2216(B) and this Article, and is accepted scheduled to take the next scheduled Board state examination following a failed state examination.~~

R3-11-305. "Good and Sufficient Reason" for Failure to Take a State Examination

~~For purposes of A.R.S. § 32-2216(B), a temporary permittee shall be deemed to have "good and sufficient reason" for failing to take the examination for which scheduled if the Board finds that such failure was due to illness or disability, military service, or other circumstances demonstrated to have been beyond the control of the licensee.~~

For purposes of A.R.S. § 32-2216(B), the Board may consider the following in determining whether "good and sufficient reason" exists for failure to take a state examination:

1. Illness or disability.
2. Military service, or
3. Any other circumstance demonstrated by the temporary permittee to be beyond the temporary permittee's control.

ARTICLE 4. CONTINUING EDUCATION REQUIREMENTS

R3-11-401. Continuing Education

- A. During the ~~two-year~~ 2-years period preceding license expiration, ~~each applicant a licensee~~ a licensee for license renewal shall have completed ~~complete or present~~ 20 credit hours of ~~Board approved courses or programs relating to the practice of veterinary medicine; continuing education.~~
1. A maximum of ~~two~~ 2 credit hours may be in practice management.
 2. ~~No more than five~~ A maximum of 5 credit hours may be noncontact continuing education, of which ~~two~~ 2 credit hours may be by ~~tapes~~ audiotapes.
- B. ~~Licensees receiving~~ A licensee who received an initial license in an even-numbered year ~~are required to earn ten~~ shall complete or present 10 credit hours of continuing education ~~prior to their~~ before the initial license renewal date. ~~Thereafter, they are subject to the requirements of Subsection A of this rule. After the initial license renewal date, the licensee shall comply with the requirements in subsection (A).~~
- C. ~~Licensees~~ A licensee who ~~graduate~~ graduated within 11 months ~~preceding initial licensing~~ before the date of license issuance may substitute ~~ten~~ 10 credit hours of college or university course work for the ~~ten~~ 10 credit hours of continuing education.

R3-11-402. Approval of Courses Continuing Education

- ~~A. The subject matter of courses or programs intended to meet continuing education requirements shall be within those subjects which are standardly taught in veterinary colleges and other related subjects approved by the Board.~~
- ~~B. The Board may approve those courses for continuing education which are taught by veterinary colleges or that are sponsored by the continuing education departments of veterinary colleges.~~
- ~~C. The Board may approve courses in veterinary education which are sponsored by the AVMA or the Arizona Veterinary Medical Association, or other states or national veterinary associations or academies as approved by the Board.~~

The following continuing education is approved by the Board:

1. Continuing education taught in schools of veterinary medicine or continuing education related to veterinary medicine approved by the Board.
2. Continuing education sponsored by the Arizona Veterinary Medical Association, American Association of Veterinary State Boards, or other state or national veterinary association or academy approved by the Board.

R3-11-403. Documentation of Attendance

- ~~A. Subject to the exceptions of A.A.C. Except as provided in R3-11-401(B) and (C), each application for renewal shall be a licensee shall submit a renewal application that is accompanied by a list of courses and a notarized affidavit of attendance of 20 credit hours of Board approved courses and programs in continuing education.~~
- ~~B. Any material false statement in this affidavit shall be grounds for taking disciplinary action against a veterinary license under the provisions of A.R.S. § 32-2233(A)(1), 32-2232(12), 32-2232(14), and 32-2234, or refusal to renew a license under the provision of A.R.S. § 32-2236.~~

R3-11-404. Credit Hours Repealed

~~One hour of credit shall be allowed for each hour of participation in any program or course approved pursuant to A.A.C. R-11-402.~~

R3-11-405. Waiver

~~If, upon application for waiver, the Board finds that the failure of the licensee to obtain the required continuing education credit hours was due to the licensee's disability, military service or absence from the United States, or was due to other circumstances beyond the control of the licensee which are deemed good and sufficient by the Board, then, upon notation of such findings in the records of the Board, the requirements shall be waived for that renewal only.~~

- A. The Board may consider the following in determining whether to grant a waiver from the continuing education requirements in this Article:
1. Illness or disability.
 2. Military service or absence from the United States, or
 3. Any other circumstance demonstrated by the licensee to be beyond the licensee's control.
- B. A licensee seeking a waiver from the continuing educational requirements in this Article shall submit a request to the Board that contains the licensee's name, reason for the request, and an explanation of the reason for the request. The Board shall comply with the timeframes in R.-11-108 when approving or denying a request for a waiver.

ARTICLE 5. PROFESSIONAL ETHICS AND STANDARDS OF PRACTICE

R3-11-501. Established Standards of Ethics

~~Pursuant to the provisions of A.R.S. § 32-2232.A.12, all veterinarians practicing under a license or permit shall be required to practice in accordance with the standards of professional ethics as herein established. The breach of any of the following stan-~~

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~~ards shall constitute grounds for taking disciplinary action against a veterinary license or permit pursuant to A.R.S. §§ 32-2233 and 32-2234.~~

- ~~1. All licensees and permittees shall conform to the standards of ethics as set forth in the constitution, bylaws and code of ethics of the AVMA and the Arizona Veterinary Medical Association in existence as of the final adoption of this rule.~~
- ~~2. A veterinarian who accepts an animal as a patient is responsible for the welfare of said patient unless released, referred, or discharged by the veterinarian or the veterinarian is dismissed by the owner.~~
- ~~3. The records or copies thereof of any patient treated by a veterinarian shall be available upon request of the owner to any other veterinarian who assumes treatment of that patient.~~
- ~~4. It shall be considered unethical to knowingly make false statements on, or to alter with intent to deceive, any document, record or report concerning treatment of a patient.~~

R3-11-501. Ethical Standards

According to A.R.S. § 32-2232(A)(12), a veterinarian practicing under a license or permit is required to practice according to the following standards of professional ethics. The breach of any of the following standards constitutes grounds for disciplinary action against a veterinary license or permit pursuant to A.R.S. §§ 32-2233 and 32-2234.

1. A veterinarian shall show respect for the veterinarian's colleagues, each animal owner to whom veterinary medical services are being provided, and the public through courteous verbal or written interchange, considerate treatment, professional appearance, professionally acceptable procedures, and the utilization of current professional and scientific knowledge.
2. A veterinarian shall not demean or injure the professional standing of another member of the profession or condemn the character of that individual's professional acts in such a manner as to be false or misleading.
3. A veterinarian may choose whom the veterinarian will serve.
4. A veterinarian shall offer or seek a consultation or a referral whenever it appears that the quality of veterinary medical service provided by the veterinarian will be enhanced.
5. When a veterinarian agrees to provide veterinary medical services to an animal, the veterinarian shall comply with the standards of practice in R3-11-502 regardless of the fees charged.
6. A responsible veterinarian employed by a partnership, corporation, or individual, that is not licensed by the Board shall ensure that the veterinary judgment and responsibility of each veterinarian employed by the partnership, corporation, or individual is neither influenced nor controlled by the partnership, corporation, or individual to the detriment of the animal.
7. A veterinarian shall ensure that emergency services are consistent with A.R.S. § 32-2201 through § 32-2281, this Chapter, and the needs and standards of the locality where the veterinary medical services are being provided.
8. A veterinarian who agrees to provide veterinary medical services to an animal is responsible for the welfare of the animal unless the animal is released, referred, or discharged by the veterinarian or the veterinarian is dismissed by the animal owner.
9. A licensed veterinarian shall provide records or copies of records of veterinary medical services, including copies of radiographs, to an animal owner or other licensed veterinarian currently providing veterinary medical services within 10 working days from the date of the animal owner's or other licensed veterinarian's request, or in less than 10 working days if the animal's medical condition so requires;
10. A veterinarian shall not make a false statement on or alter any document, record, or report concerning treatment of an animal.

R3-11-502. Discharge of Patients

~~Upon discharge or completion of treatment of any patient, the veterinarian shall give the owner or responsible person instructions concerning further care or treatment and further examination of the patient.~~

R3-11-502. Standards of Practice

- A. Before providing veterinary medical services or housing an animal, a responsible veterinarian shall ensure that the animal owner is provided a written notice that states whether personnel will be present on the veterinary medical premises for 24-hour observation of the animal.
- B. Before providing veterinary medical services, a veterinarian shall ensure that the animal owner is provided an estimation of cost for the veterinary medical services, except in the case of livestock.
- C. Before an animal is discharged, a veterinarian shall ensure that the animal owner is provided with instructions detailing the care of the animal after discharge.
- D. Before euthanizing an animal for which the animal owner is known, a veterinarian shall obtain written authorization from the animal owner or verbal authorization from the animal owner that is witnessed by 1 other individual.
- E. A veterinarian shall separate an animal with a suspected or diagnosed contagious disease or illness so that neither the animal nor the interior of the animal's compartment comes into contact with another animal or the animal's compartment.
- F. If general anesthesia is administered or surgery is performed on an animal by a veterinarian, the veterinarian shall ensure:

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1. Authorization to perform surgery is obtained from the animal owner if the animal owner is known before surgery is performed;
 2. The animal owner is provided the notifications stated in R3-11-502(A) and (B) before anesthesia is administered or surgery is performed;
 3. Within 6 hours before anesthesia is administered or surgery is performed, the animal is examined and the animal's temperature, heart rate, respiratory rate, diagnosis and general condition are recorded in the animal's medical record.
 4. Expired supplies are not used;
 5. The animal's heart rate and respiratory rate are recorded in the animal's medical record immediately after giving the animal a general anesthetic and monitored and recorded a minimum of every 15 minutes while anesthesia is being administered;
 6. After the animal is given a general anesthetic, the animal is continuously observed by personnel until the animal is extubated and able to swallow; and
 7. For 3 years from the date of the administration of an anesthesia, a written anesthetic log is maintained on the veterinary medical premises that includes:
 - a. The animal's name and species,
 - b. The name of the animal owner,
 - c. The date of administration of the anesthesia,
 - d. The recovery status of the animal, and
 - e. The name of the veterinarian administering the anesthesia.
- G.** A veterinarian shall follow manufacturer's label requirements for the storage and handling of biologics, veterinary supplies, and veterinary medications.
- H.** A veterinarian who dispenses prescription-only-drugs shall:
1. Comply with all federal and state laws including A.A.C. Title 3, Chapter 11, Article 8, regarding the dispensing of prescription-only-drugs;
 2. Ensure that prescription-only-drugs or prescription-only devices are destroyed or returned to the manufacturer or distributor no later than 30 days from their expiration date;
- I.** A veterinarian who dispenses controlled substances shall:
1. Comply with all federal and state laws including A.A.C. Title 3, Chapter 11, Article 8 regarding the dispensing of controlled substances; and
 2. Maintain an inventory record on the veterinary medical premises for 2 years from the date of entry of each controlled substance purchased by the veterinarian that contains the:
 - a. Name of the controlled substance,
 - b. Strength of the controlled substance,
 - c. Date the controlled substance was received by the veterinarian,
 - d. Amount of the controlled substance received by the veterinarian,
 - e. Name of the distributor of the controlled substance, and
 - f. Invoice number.
 3. Maintain a dispensing log on the veterinary medical premises, separate from the inventory record for 2 years from the date of entry that contains for each controlled substance dispensed the:
 - a. Name of the controlled substance,
 - b. Strength of the controlled substance,
 - c. Amount of the controlled substance,
 - d. Name of the animal to whom dispensed,
 - e. Name of the animal owner,
 - f. Date dispensed, and
 - g. Name of the veterinarian who dispensed the drug.
- J.** For 3 years from the last date an animal receives veterinary medical services, a veterinarian shall maintain a written medical record on the veterinary medical premises containing the:
1. Name, address, and telephone number of the animal owner;
 2. Description, sex, breed, weight, and age of the animal;
 3. Date of veterinary medical services;
 4. Results of examination, including temperature, heart rate, respiratory rate, diagnosis and general condition of the animal, except for livestock;
 5. Treatment provided to the animal;
 6. Name of each medication administered, including dosage, amount, and frequency;
 7. Name of each medication prescribed, including dosage, amount, and frequency;
 8. Name and result of each diagnostic and laboratory test conducted;
 9. Signature or initials of each individual placing an entry in the medical record; and
 10. Signature or initials of the veterinarian performing the veterinary medical services.

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- K.** A veterinarian shall ensure that a radiograph of an animal that is permanently labeled with the following information and maintained on the veterinary medical premises for 3 years from the last date an animal receives veterinary medical services:
1. The name of the animal owner;
 2. The name of the animal;
 3. The date the radiograph was taken;
 4. The name of the veterinarian or veterinary medical premises; and
 5. The anatomical orientation.

R3-11-503. Established Standards of Veterinary Medical Record Keeping Repealed

- A.** ~~Patient medical records must be maintained for every animal accepted and treated as an individual patient by a veterinarian and for every animal group (e.g. herd, litter, flock) treated by a veterinarian. These records must be maintained and stored in an orderly manner lending itself to immediate retrieval.~~
- B.** ~~The following data must be clearly noted:~~
- ~~1. Name, address and phone number of owner or agent.~~
 - ~~2. Description, sex (if readily determinable), breed and age of animal; or description group.~~
 - ~~3. Date animal or group was seen, admitted, discharged.~~
 - ~~4. Results of examination, condition, diagnosis suspected.~~
 - ~~5. All medications, treatment, prescriptions or prophylaxis given, including amount and frequency for both inpatient and outpatient care.~~
 - ~~6. Diagnostic and laboratory tests or techniques utilized, and results of each.~~
- C.** ~~Veterinarians who practice with other veterinarians shall indicate by recognizable means on each patient's or animal group's medical record any treatment he or she has performed or which he or she has directed a technician or assistant to perform.~~
- D.** ~~All radiographs must be permanently labeled to identify the veterinarian or premise, the patient, the owner, the date, and anatomical orientation.~~
- E.** ~~Medical records of both individual and group patients shall be maintained for a minimum of three years after the last visit.~~

ARTICLE 6. VETERINARY TECHNICIANS

R3-11-603. Examination Committee

The Board ~~will~~may appoint a committee of Arizona licensed veterinarians and certified veterinary technicians of sufficient number to assist the Board in the preparation and ~~in the administration of the examination~~ examinations of applicants for veterinary technician certificates. ~~The An examination as recommended by the examination committee shall be~~ is subject to the approval of the Board.

R3-11-604. Examinations

- A.** ~~All applications for examination shall be received in the office of the Arizona State Veterinary Medical Examining Board no later than 60 days prior to the scheduled examination date and shall be accompanied by all required application forms, papers and information, and the examination fees. Said fees shall be submitted by certified check or money order only.~~
- B.** ~~Examinations of applicants for certification as a veterinary technician in Arizona shall be held at least annually at a time, place, and date to be provided in writing to all applicants no less than 20 days before the examination.~~
- C.** ~~An applicant shall be required to pass the Veterinary Technician National Examination (VTNE) and the state examination with scores of at least 70% in both examinations prior to licensure.~~
- D.** ~~An applicant who has passed the Veterinary Technician National Examination within five calendar years preceding application for examination in Arizona shall request that the scores be forwarded to the Board directly from the Professional Examination Service.~~
- A.** The Board shall hold a veterinary technician examination at least once a year. A minimum of 20 days before the examination, the Board shall send an applicant a written notice of the date, time, and place of the examination.
- B.** The applicant shall pass a national veterinary technician examination and an Arizona veterinary technician examination with scores of at least 70% in each examination before being certified by the Board.
- C.** If the applicant has passed either a national veterinary technician examination or an Arizona veterinary technician examination within 5 years from the date of the application, the applicant is not required to retake the examination that was passed.

R3-11-605. Certified Veterinary Technicians Services

- A.** ~~The following tasks may be performed under the direction, supervision, and control of a licensed veterinarian currently registered to practice in this state, provided said veterinarian makes a daily physical examination of the patient treated.~~
- ~~1. Venipuncture, drawing venous blood — this includes inserting an indwelling catheter when required.~~
 - ~~2. Catheterization of the urinary bladder.~~

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3. ~~Injections, including hypodermic injections and parenteral fluids, except when in conflict with government regulations.~~
 4. ~~Immunizations immediately after examination by a licensed veterinarian, except when in conflict with government regulations.~~
 5. ~~Assist in the administration of anesthesia; induction of anesthesia shall be performed by the supervising veterinarian; monitoring and maintaining anesthesia may be performed by the technician.~~
 6. ~~Exposing and developing X-ray film.~~
 7. ~~Collection and administering whole blood or plasma to a patient.~~
 8. ~~Assisting in surgery as directed by the supervising veterinarian.~~
 9. ~~Take electrocardiograms and electroencephalograms tracings;~~
 10. ~~Taking and preparing skin scrapings for examination.~~
 11. ~~Recording vital and necessary information of patient records, pertinent to a sick or injured animal.~~
 12. ~~Preparing cultures for bacteriological examination.~~
 13. ~~Routine laboratory procedures including hematology, serology, chemistry, urinalysis, fecal analysis, and skin scrapings.~~
 14. ~~Administering oral drugs, colonic irrigations, and wound dressings.~~
 15. ~~Dental prophylaxis, not including extractions.~~
 16. ~~Preparation of patients for surgery, including clipping, scrubbing, disinfecting operative site as well as sterilizing drapes, instruments, gloves, gowns, etc., used in surgery.~~
 17. ~~Preparation of medicants for dispensing to clients on the direct or written order of the supervising veterinarian.~~
 18. ~~Maintaining surgery log, X ray log, and laboratory log.~~
 19. ~~Maintaining pharmacy records.~~
- B.** Under conditions of an emergency, a certified veterinary technician may render the following lifesaving aid and treatment:
1. Application of tourniquets or pressure bandages to control hemorrhage;
 2. Administration of pharmacological agents and parenteral fluids shall only be performed after direct communication with a veterinarian authorized to practice in this state, and such veterinarian either present or en route to the location of the distressed animal;
 3. Resuscitative oxygen procedures;
 4. Establishing open airways including intubation appliances, but excluding surgery;
 5. Perform external cardiac massage;
 6. Application of temporary splints or bandages to prevent further injury to bones or soft tissues;
 7. Application of appropriate wound dressings and external supportive treatment in severe burn cases;
 8. External supportive treatment in heat prostrate cases.
- A.** Except as provided in subsection (B), a certified veterinary technician may perform the tasks delegated by a licensed veterinarian while under the direction, supervision, and control of the licensed veterinarian.
- B.** A certified veterinary technician shall not:
1. Perform surgery.
 2. Diagnose.
 3. Prescribe a medication, or
 4. Provide a prognosis.

R3-11-607. Renewal of Veterinary Technician Certificates Certificate

- A.** All certificate holders shall submit renewal fees and up to date information concerning current employment status, location of employment, and correct home and business mailing addresses prior to February 1 of every odd-numbered year on a renewal application form provided and mailed to all certificate holders by the Board.
- B.** Failure to submit the appropriate certificate renewal fee prior to February 1 of every odd-numbered year shall result in forfeiture of all privileges and rights extended by the certificate and the certificate holder must immediately cease and desist in engaging further in the performance of veterinary technician services until the compliance with the requirements of subsection (A) and payment of a delinquency fee in addition to the certificate renewal fee.
- A.** A certified veterinary technician shall submit the renewal fee and information concerning current employment status, location of employment, and correct home and business mailing address before February 1 of every odd-numbered year on a renewal application form provided and mailed to the certified veterinary technician by the Board.
- B.** Failure to submit the certificate renewal fee before February 1 of every odd-numbered year shall result in forfeiture of all privileges and rights extended by the certificate. The certified veterinary technician shall immediately cease performing veterinary technician services until complying with the requirements of subsection (A) and paying the delinquency fee required in R.-11-105 in addition to the certificate renewal fee.

ARTICLE 7. VETERINARY MEDICAL PREMISES AND EQUIPMENT

~~R3-11-701. Building and Ground Standards~~

- ~~A. Buildings and grounds at which animals are accepted for veterinary medical services shall be constructed and maintained in accordance with applicable state and local building, zoning, and health department regulations.~~
- ~~B. Fire prevention measures must meet state and local fire codes.~~
- ~~C. The veterinary medical premises shall be identifiable as a veterinary medical facility during all hours in which services are available. If the premise is to remain open to the public at night, outside lighting to identify the premises shall be maintained.~~

R3-11-701. General Veterinary Medical Premises Standards

A responsible veterinarian shall ensure that:

1. The physical plant of a veterinary medical premises conforms to state and local building and fire codes and local zoning requirements;
2. A veterinary medical premise's identification is visible to the public from the outside of its physical plant. The identification shall include the hours of operation and be placed so that it is unobstructed from public view. If the hours of operation include hours after dusk, a means of illuminating the sign shall be provided and used during the hours of operation after dusk;
3. Floors, tables, countertops, sinks, and fixtures within the veterinary medical premises are made of nonporous materials that may be sanitized;
4. Water and a means of achieving water temperatures from 32°F to 212°F is provided on the veterinary medical premises.
5. Refrigerated storage space, large enough to contain all deceased animals except livestock, is provided on the veterinary medical premises, pending necropsy and disposal pick-up;
6. Storage space is provided on the veterinary medical premises for biohazardous waste pending disposal pick-up.
7. If animals, other than livestock, will be housed on a veterinary medical premises, an individual compartment, equipped with a latch, for each animal housed on the veterinary medical premise is provided.

~~R3-11-702. Standards for Veterinary Premises~~

~~Prior to the admission of any animal for treatment, hospitalization, or boarding by a veterinary medical facility, the owner of or responsible person for the animal shall be informed in writing whether personnel trained in patient observation will attend the patient continuously outside regular office hours.~~

R3-11-702. Equipment and Supplies

A responsible veterinarian shall ensure that equipment and supplies are provided on the veterinary medical premises of a sufficient number and type to provide the veterinary medical services that are offered at the veterinary medical premises.

~~R3-11-703. Equipment Standards~~

- ~~A. Each veterinary premise shall be equipped with adequate diagnostic and treatment equipment and supplies to provide the services offered at a level consistent with the standards of veterinary practice within the community in which the premise is located.~~
- ~~B. Each veterinary medical premise shall meet manufacturers' label requirements for biologics and other supplies and medications requiring temperature control.~~
- ~~C. Oxygen equipment and supplies for administration must be readily available any time general anesthesia is to be administered to a small animal.~~
- ~~D. Premises offering surgery must have properly sterilized surgical supplies and instruments.~~
- ~~E. An individual compartment must be provided on the premises for each animal being housed.~~

R3-11-703. Maintenance Standards for a Veterinary Medical Premises

A responsible veterinarian shall ensure that:

1. All exits, corridors, and passageways inside and outside the veterinary medical premises are unobstructed at all times;
2. Combustible material such as paper, boxes, or rags are not allowed to accumulate inside or outside the veterinary medical premises;
3. Temperatures are maintained between 65°F and 90°F in each room where animals, other than livestock, are treated or housed;
4. Floors, countertops, tables, sinks, and any other equipment or fixtures used in a veterinary medical premises are maintained in a clean condition and sanitized after contact with an animal or animal tissue; and
5. Animal compartments are cleaned and sanitized at least once every 24 hours when an animal, other than livestock is being housed and after each animal, other than livestock, vacates the compartment.

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R3-11-704. Housekeeping Standards

- ~~A. Regulations of the Arizona Department of Health Services and of the local Health Department pertaining to sewage, sanitation and public health requirements shall be observed.~~
- ~~B. All areas of the veterinary medical grounds, buildings and facilities shall be kept clean and free of refuse.~~
- ~~C. Floors, countertops, tables, sinks, and similar equipment and fixtures shall be cleaned and disinfected after contact with any internal organ, body fluid or other bodily discharge of a patient.~~
- ~~D. Examination tables, surgery tables and all indoor animal compartments shall be cleaned and disinfected after each patient use.~~
- ~~E. Indoor animal compartments and exercise runs must be cleaned and disinfected at least once a day when in use.~~
- ~~F. Large animal compartments shall be cleaned at least once daily while in use. If communicable disease of the patient housed therein is present, the enclosure must be disinfected after each patient usage.~~

R3-11-704. Surgical Equipment

In addition to complying with the requirements in this Article, if surgery is performed on a veterinary medical premises, a responsible veterinarian shall ensure that the following is provided on the veterinary medical premises:

1. Caps, masks, and sterile gloves and gowns;
2. Sterile surgical packs, including:
 - a. Drapes;
 - b. Sponges; and
 - c. Surgical instruments necessary to perform a surgical procedure;
3. An oxygen tank that contains oxygen in an amount sufficient for each animal to whom general anesthesia is administered; and
4. A means of administering anesthesia for each animal to whom general anesthesia is administered;
5. Either a fixed or portable surgical light to illuminate the surgical site; and
6. A light for use if the surgical light will not operate.

R3-11-705. Mobile Clinics

- ~~A. All facility, housekeeping and equipment standards enumerated in this Chapter for fixed site clinics shall be applicable to mobile clinics.~~
- ~~B. All mobile clinics shall be equipped with:~~
 - ~~1. Hot and cold water source.~~
 - ~~2. Collection tank for the disposal of waste materials.~~
 - ~~3. A power source to operate all diagnostic equipment.~~
- A. Except for R.-11-701(1), R.-11-701(2), R.-11-701(5), and R.-11-701(6) the application process and standards contained in this Article apply to mobile clinics.
- B. A responsible veterinarian shall provide a mobile clinic with:
 1. An electrical power source;
 2. Storage space for biohazardous waste pending disposal pick-up; and
 3. Storage space, separate from storage space in subsection (B)(2), for the transportation of a deceased animal.

R3-11-706. Mobile Units

- ~~A. Drugs shall be maintained in a safe and orderly manner.~~
- ~~B. Facilities shall be provided for meeting manufacturer's requirements for biologics, medication and supplies requiring temperature control.~~
- ~~C. Surgical equipment shall be in either individual sterilized packs or a sterilizing solution.~~
- A responsible veterinarian shall:
 1. Ensure that controlled substances and prescription only drugs are maintained accessible only to authorized personnel.
 2. Meet manufacturer's label requirements for the storage and handling of biologics and veterinary supplies and medications requiring temperature control, and
 3. Maintain sterile surgical supplies and equipment.

ARTICLE 8. DRUG DISPENSING

R3-11-801. Notification That Prescription-only Drugs or Controlled Substances May Be Available at a Pharmacy

- ~~A. A dispensing veterinarian shall notify an animal owner or person responsible for the animal that some prescription-only products, drugs and controlled substances may be available at a pharmacy. Notification may be made in any of the following ways: by:~~
 - ~~1. Orally Stating such availability at or before the time of dispensing; ;~~
 - ~~2. By posting Posting a written statement which that is visible to the animal owner, or person responsible for the animal; or~~
 - ~~3. By providing Providing each animal the animal owner or person responsible for the animal with written notification.~~

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4. ~~By having each animal owner or person responsible for the animal sign a statement that the veterinarian provided notification.~~

B. A dispensing veterinarian may provide ~~A~~ a written prescription to the animal owner ~~may be provided if requested by the animal owner or person responsible for the animal.~~

R3-11-802. Labeling Requirements

A veterinarian shall dispense ~~A~~ a prescription-only product drug or a controlled substance ~~shall be dispensed~~ in a container bearing a clearly legible label ~~which that~~ sets forth all of the information ~~required by~~ in A.R.S. § 32-2281(A)(1), and the name and telephone number of the veterinary medical premises ~~license~~ from which the prescription-only ~~product drug~~ or controlled substance was dispensed.

R3-11-803. Packaging Requirements

A. A veterinarian shall dispense 4 ounces or less of a ~~A~~ prescription-only product ~~which is repackaged by a veterinarian shall be dispensed~~ drug in a child-proof container unless the animal owner ~~or the person responsible for the animal~~ waives this requirement.

B. All ~~A~~ veterinarian shall dispense a controlled substances ~~shall be dispensed~~ substance in a child-proof container.

~~BC.~~ A veterinarian may dispense more than 4 ounces of a ~~bulk~~ prescription-only product drug in a nonchild-proof container. ~~For the purposes of this Subsection more than four ounces of any prescription-only product shall constitute a bulk product.~~

~~CD.~~ A veterinarian may dispense a prescription-only products ~~drug~~ in the manufacturer's original dispensing package without repackaging the ~~product~~ prescription-only drug in a child-proof container.

R3-11-804. Record Keeping Repealed

A. ~~Records shall be kept which account for all dispensed controlled substances. The records shall comply with all federal and state laws. All information required by statute shall be recorded in the patient record along with the initials of the veterinarian who authorized the dispensing of the controlled substances.~~

B. ~~A separate inventory record shall be kept for each controlled substances by name and strength. The record shall include:~~

- ~~1. Records of the receipt, which include all information required by federal law, the date of receipt, the amount received, the source of receipt, and the invoice number.~~
- ~~2. Records of dispensing, which include the date the controlled substance was dispensed, the amount dispensed, the animal's name, identification of the patient record, identification of the person who dispensed the drug, and identification of the veterinarian who supervised the dispensing.~~

R3-11-805. Storage

A. A dispensing veterinarian shall store ~~All~~ controlled substances ~~shall be kept under lock and key unless a veterinarian is immediately present except for controlled substances that are authorized by a responsible veterinarian to be administered by personnel.~~

B. A dispensing veterinarian shall store ~~All~~ prescription-only products ~~drugs~~ shall be stored in an area where members of the public are not allowed access unless accompanied by a veterinarian or a member of the veterinarian's staff.

C. A dispensing veterinarian shall store ~~All~~ prescription-only drugs and prescription-only devices ~~shall be stored~~ in compliance with state and federal laws and in compliance with the manufacturer's requirements. ~~All outdated drugs shall be destroyed or returned to the source of supply. Outdated drugs shall not be dispensed.~~

R3-11-806. Access Repealed

A. ~~Nonveterinarian employees shall not have access to a controlled substance unless a veterinarian is immediately present.~~

B. ~~Nonveterinarian employees may have access to prescription-only drugs or devices.~~

R3-11-807. Dispensing ~~Drugs~~ a Controlled Substance or Prescription-only Drug

A. When dispensing a controlled ~~substances;~~ substance:

1. ~~a~~ A dispensing veterinarian or an authorized employee ~~personnel who are not veterinarians acting under the direct supervision of~~ authorized by a veterinarian may:
 - a. ~~select~~ Select the ~~drug~~ controlled substance,
 - b. ~~count~~ Count the quantity of the ~~drug~~ controlled substance, and
 - c. ~~place~~ Place the ~~drug~~ controlled substance in a prescription container.
2. ~~Any employee~~ Licensed or unlicensed personnel may:
 - a. ~~prepare~~ Prepare labels,
 - b. ~~prepare~~ Prepare ~~drug~~ containers for controlled substances, or
 - c. ~~record~~ Record information required by state and federal laws.
3. A dispensing veterinarian shall personally review the label of a repackaged product controlled substance and the patient's medical record and the records to and ensure that the label complies with R3-11-502 and R3-11-502(J) and state and federal laws before the ~~drug~~ controlled substance is dispensed.

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- B. When dispensing a prescription-only ~~drugs, drug:~~
1. ~~a A dispensing veterinarian or an authorized employee~~ personnel who are not veterinarians ~~acting under the direct supervision of~~ authorized by a veterinarian may:
 - a. ~~repackage~~ Repackage prescription-only drugs,
 - b. ~~prepare~~ Prepare labels,
 - c. ~~prepare~~ Prepare ~~drug~~ containers for prescription-only drugs, or
 - d. ~~record~~ Record information required by state or federal laws.
 2. The ~~dispensing~~ veterinarian ~~supervising~~ authorizing the dispensing shall ~~personally~~ ensure that records are maintained according to R3-11-502(H) and R3-11-502(I) and all state and federal laws are followed.

ARTICLE 9. INVESTIGATIONS AND HEARINGS

R3-11-901. Investigations of Alleged Violations

- A. ~~Any A~~ person may notify the Board of an alleged violation of ~~the A.R.S. §§ 32-2201 through 32-2281 and this Chapter or~~ rules. The Board also may initiate a complaint on its own motion.
- ~~B. The Board may request a licensee to respond in writing to any a complaint regarding the licensee. If the Board requests a licensee to provide a written response, the licensee shall respond within 15 days. The licensee also shall provide the Board with all relevant records or documents concerning the complaint.~~
- B. The Board shall send a written notice of a complaint to a licensee. The licensee shall provide a written response and all relevant records or documents concerning the complaint if requested by the Board, no later than 15 days from the date of the notice.
- C. The Board may ~~ask~~ request the complainant ~~and/or or~~ the licensee to reply to any statements, ~~records~~, or documents the Board receives concerning a complaint. If the Board requests the complainant ~~and/or or~~ licensee to provide the Board with additional information concerning a complaint, the complainant ~~and/or or~~ the licensee shall respond in writing within 15 days from the date of the request.
- D. The Board may request the complainant ~~and/or or~~ the licensee to appear before the Board to assist in the Board's investigation.

R3-11-902. Informal ~~Interviews~~ Interview

- ~~A. The Board may request the licensee and/or complainant to appear before the Board to determine if a violation of the chapter or rules has occurred.~~
- ~~B. A complainant or a licensee who is asked to appear for an informal interview may appear with or without the assistance of counsel. If a party fails to appear the informal interview may be held in the party's absence.~~
- ~~C. An informal interview does not follow the strict rules of procedure or evidence required in judicial proceedings. The Board may question any person with knowledge of the complaint. The Board also may review any documents or records which are relevant to the complaint.~~
- ~~D. At the conclusion of the informal interview the Board may order additional investigation, another informal interview, dismiss the complaint, impose any disciplinary sanctions authorized by statute if it finds a violation, or order a formal hearing of the complaint.~~
- ~~E. An aggrieved party may seek rehearing or review of a Board decision pursuant to A.A.C. R3-11-904.~~
- A. The Board shall conduct an informal interview under A.R.S. § 32-2234 as follows:
1. The Board shall send a written notice of the informal interview to all parties by personal service or certified mail, return receipt requested, at least 20 days before the informal interview that contains:
 - a. The time, place, and date of the informal interview;
 - b. An explanation of the informal nature of the informal interview;
 - c. A statement of the matters asserted or issues involved;
 - d. The licensee's right to appear with or without counsel;
 - e. A statement that if a licensee or complainant fails to appear at an informal view, the informal interview may be held in the licensee's or complainant's absence. and
 - f. The licensee's right to a formal hearing held according to A.R.S. § 32-2234.
 2. During the informal interview, the Board may:
 - a. Swear in the licensee and all witnesses;
 - b. Question the licensee and all witnesses; and
 - c. Deliberate.
 3. At the conclusion of the informal interview the Board may:
 - a. Order additional investigation;
 - b. Order another informal interview;
 - c. Dismiss the complaint;
 - d. Impose any disciplinary sanctions authorized by A.R.S. § 32-2234 if it finds a violation; or
 - e. Order a formal hearing of the complaint.

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- B.** The Board shall issue written findings of fact, conclusions of law, and order of the Board no later than 60 days from the date of the conclusion of the informal interview.
- C.** A licensee or the Board may seek a Board rehearing or review of a Board decision as stated in A.A.C. R3-11-904.

R3-11-903. Formal Hearings ~~Hearing~~

- A.** ~~A formal hearing is initiated by the Board filing a Complaint and Notice of Hearing. Notice of the hearing shall be served upon the licensee or the licensee's attorney by mailing a copy by certified mail, postage prepaid, to the last address of record with the Board, or by personal service at least 20 days prior to the date set for hearing.~~
- B.** ~~A licensee served with a notice of hearing shall file an answer by the date specified in the Complaint and Notice of Hearing admitting or denying the allegations of the complaint.~~
- C.** ~~A Complaint and Notice of Hearing may be amended at any time. The licensee is entitled to at least 20 days notice of any new charges.~~
- D.** ~~The licensee may appear at the formal hearing with or without the assistance of an attorney. If a party fails to appear, the hearing may be held in the party's absence.~~
- E.** ~~A formal hearing may be conducted by the Board or before a hearing officer on behalf of the Board. A formal hearing does not follow the strict rules of procedure or the rules of evidence required in judicial proceedings. The presiding officer shall rule on the procedure to be followed and admissibility of evidence.~~
- F.** ~~If the hearing is conducted by a hearing officer, the hearing officer shall write a report and recommendation within 30 days of the close of the hearing. The Board shall provide all parties with a copy of the hearing officer's report and recommendation after providing ten days notice to all parties. The Board may adopt, reject, or modify the hearing officer's report in whole or in part. The Board shall enter a formal order setting forth its action on the hearing officer's report.~~
- G.** ~~In all cases determined by formal hearing the Board shall enter a written order. The Board shall serve all parties with copies of this order. Any party may seek rehearing or review of this order pursuant to A.A.C. R3-11-904.~~
- A.** If a formal hearing under A.R.S. § 32-2234 is to be held before a hearing officer, the requirements in A.R.S. § 41-1092 through 41-1092.11 apply.
- B.** If a formal hearing under A.R.S. § 32-2234 is to be held directly before the Board, the following applies:
 - 1. The Board shall provide a written complaint and notice of formal hearing to a licensee at the licensee's last known address of record, by personal service or certified mail, return receipt requested at least 20 days before the date set for the formal hearing.
 - 2. A licensee served with a complaint and notice of hearing shall file an answer by the date specified in the notice of hearing admitting or denying the allegations in the complaint.
 - 3. A complaint and notice of hearing may be amended at any time. The Board shall send written notice of any changes in the complaint and notice of hearing to the licensee at least 20 days before a formal hearing.
 - 4. The licensee may appear at the formal hearing with or without the assistance of an attorney. If a party fails to appear, the Board may hold the formal hearing in the party's absence.
 - 5. The Board may conduct a formal hearing without adherence to the rules of procedure or rules of evidence used in civil proceedings. At the formal hearing the Board shall rule on the procedure to be followed and admissibility of evidence.
 - 6. The Board shall send a written decision that includes written findings of fact, conclusions of law, and order of the Board to the licensee and all the parties within 60 days after the formal hearing is concluded. A licensee or the Board may seek rehearing or review of the order according to R3-11-904.

R3-11-904. Rehearing or Review of Decisions

- A.** ~~Except as provided in Subsection E of this Rule, subsection (F), any a party in a contested case before the Board who is aggrieved by a decision rendered in such case issued by the Board may file with the Board, not later than 20 30 days after service of the decision, a written petition motion for rehearing or review of the decision specifying the particular grounds for rehearing or review. For purposes of this paragraph, a decision shall be is deemed to have been served when personally delivered to the party's last known address or mailed by certified mail to the party or the party's attorney.~~
- B.** ~~A petition for rehearing A party filing a motion for rehearing or review under this rule may be amended amend the motion at any time before it is rules ruled upon by the Board. A response may be filed Other parties may file a response within 20 15 days after service of such petition or amended petition by any other party the date the motion for rehearing or review is filed. The Board may require the filing of written briefs upon that the parties file supplemental memoranda explaining the issues raised in the petition motion and may provide for permit oral argument.~~
- C.** The Board may grant A a rehearing or review of the decision may be granted for any of the following causes materially affecting the petitioner's party's rights:
 - 1. Irregularity in the administrative proceedings of the Board or an abuse of discretion, whereby the petitioner was which deprived a party of a fair hearing.
 - 2. Misconduct of the Board or its hearing officer or the prevailing party.
 - 3. Accident or surprise which could not have been prevented by ordinary prudence.

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4. Newly-discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing.
 5. Excessive or insufficient penalties.
 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing.
 7. That the findings of fact or decision is not supported by the evidence or is contrary to law.
- D.** The Board may affirm or modify its decision or grant a rehearing on all or part of the issues to any of the parties in the complaint for any of the reasons set forth in ~~Subsection C: subsection (C) of this rule.~~ An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted.
- E.** Not later than ~~20~~ 30 days after a decision is ~~rendered~~ issued by the Board, the Board may on its own initiative ~~order grant~~ a rehearing or review of its decision for any of the reasons set forth in ~~Subsection C subsection (C) of this rule.~~ An order granting a rehearing shall specify the grounds ~~therefor~~ on which rehearing or review is granted
- ~~E.F.~~** If the Board makes specific findings that the immediate effectiveness of a decision is necessary for the immediate preservation of ~~the public peace,~~ health and safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, ~~any application for judicial or the decision shall be made~~ the aggrieved party shall make an application for judicial review of the decision within the time limits permitted for applications for judicial review of the Board's final decisions.
- G.** The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later. If a motion for rehearing or review is granted, the Board shall hold the rehearing or review with 120 days from the date the Board issues the order for rehearing or review.
- F.** For purposes of this section the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.

R3-11-905. Depositions, Issuance of Subpoenas, Service

- A.** ~~Depositions are available to record the testimony of an unavailable witness. Any A party which that desires to record the testimony of an unavailable shall file a request with the Board for permission to take the deposition of the a witness who is unable to attend a hearing before the Board-witness shall submit a request to take a deposition of an unavailable witness to the Board.~~
1. If the Board grants ~~a petition~~ the request to take a deposition of an unavailable witness, the party may proceed to take the deposition of the witness by complying with the Arizona Rules of Civil Procedure.
 2. The Board may, in its discretion, designate the time and place ~~and the officer~~ before whom such deposition may be taken.
 3. ~~The expense of any deposition shall be borne by the party applying to the Board for permission to take a deposition. The party requesting the deposition shall bear the expense of the deposition.~~
- B.** ~~The Board or its hearing officers may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Any party desiring the Board or its hearing officers to issue a subpoena shall make written application. Service of a subpoena shall be made at the expense of the party applying for it and shall be made in the manner provided by law for service of subpoenas in civil actions.~~
- B.** Subpoenas may be issued as follows:
1. If a hearing is to be conducted by the Board, the Board may issue a subpoena for the attendance of witnesses or the production of books, records, documents and other evidence according to A.R.S. § 32-2237(F).
 - a. The Board shall serve a subpoena on each party at least 10 days before the hearing date.
 - b. A party shall submit a written request for a subpoena with the Board. The party shall submit the request in the time necessary to allow compliance with subsection (B)(1)(a).
 - c. The party requesting service of a subpoena shall bear the expense of the service of the subpoena.
 2. If a hearing is to be conducted by a hearing officer, subpoenas are issued by the Office of Administrative Hearings according to A.R.S. § 41-1092.02.
- C.** Service of any decision, order, notice, subpoena or other process may be made personally in the same manner as provided for service of process in a civil action, or may be mailed by certified mail, postage prepaid, to the last address of record with the Board.
1. Personal service is effective on the date received. Service by certified mail is effective when deposited in the United States mail.
 2. Service upon an attorney who has appeared on behalf of a party constitutes service upon the party.
 3. Proof of service may be made by the affidavit or oral testimony of the person making such service.

Editor's Note: The text in Section R7-3-506 in the following Notice of Proposed Rulemaking was amended at 6 A.A.R. 917 (March 3, 2000) in a Notice of Exempt Rulemaking (<http://www.sosaz.com/aar/2000/10/contents.shtml>). The changes made to the rule at 6 A.A.R. 917 will be published in Supp. 00-1 of the Arizona Administrative Code and will be made available on-line; therefore the rule in the Code currently on-line is substantially different from the text printed here.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R7-3-506 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 15-1852(C)

Implementing statute: A.R.S. § 15-1873 et seq.
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 6 A.A.R. 1515, April 21, 2000
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Verna Allen, Executive Director

Address: 2020 N. Central Avenue, Suite 275
Phoenix, Arizona 85004

Telephone: (602) 229-2595

Fax: (602) 229-2599
- 5. An explanation of the rule, including the agency's reason's for initiating the rule:**

The Commission for Postsecondary Education submitted a Request for Letter Ruling to the Internal Revenue Service (IRS) on June 26, 1998, and provided additional information to the IRS on November 10, 1998, as requested from the IRS, to acknowledge the Arizona Family College Savings Program (Program), a Qualified State Tuition Program under § 529 of the Internal Revenue Code. The IRS is requesting that the Commission make the rule changes described below to satisfy the requirements in determining the Program as a Qualified State Tuition Program. R7-3-506 will amend the responsibility of reporting withdrawals from eligible educational institutions to include the account owner. This amendment should satisfy the IRS to determine the Arizona Family College Savings Program as a Qualified State Tuition Program under § 529 of the Internal Revenue Code.
- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

No study is available or was relied upon.
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**

 - a. An identification of the proposed rulemaking: Arizona Family College Savings Plan, R7-3-506, adopted pursuant to A.R.S. § 15-1873 et seq.
 - b. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking: Persons directly affected are account owners.

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c. An analysis of the probable costs and benefits from the implementation and enforcement of the proposed rulemaking on the Commission, and on any political subdivision or business directly affected by the proposed rulemaking: The Commission will bear administrative costs in keeping track of the information received from the financial institutions and enforcing the penalties for non-qualified withdrawals. The financial institution's will bear the burden of ensuring that substantiation is provided for withdrawals.

d. The probable impact of the proposed rulemaking on employment in business, agencies, and political subdivisions of this state affected by the proposed rulemaking: None.

e. A statement of the probable impact of the proposed rulemaking on small business: Some financial institutions are small businesses and will need to bear administrative costs in implementing and maintaining the Program.

f. A statement of the probable effect on state revenues: No effect is anticipated as this Program is self-supported.

g. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking: Due to the nature of the various statutory requirements, less intrusive or less costly alternatives are not available.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Verna Allen, Executive Director
Address: 2020 N. Central Avenue, Suite 275
Phoenix, Arizona 85004
Telephone: (602) 229-2595
Fax: (602) 229-2599

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: June 7, 2000
Time: 9:50 a.m.
Location: Commission for Postsecondary Education, 2020 N. Central Avenue, Suite #275, Phoenix, Arizona 85004
Nature: Oral Proceeding and Adoption of Rules

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporation by reference and their location in the rules:

Not applicable

13. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

Section

R7-3-506. Withdrawals; Reporting of Non-qualified Withdrawals; Penalties

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

R7-3-506. Withdrawals; Reporting of Non-qualified Withdrawals; Penalties

A. No change.

B. Withdrawals

1. Qualified Withdrawals

In order to make a qualified withdrawal, the account holder or the account holder's designee must complete a certification, on a form approved by the Commission, declaring that the funds will be used for the purposes set forth in A.R.S. § 15-1871(11). The form shall include a statement advising the designated beneficiary and account owner of

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their obligations to report, in accordance with R7-3-506(B)(3)(c), refunds received from a higher education institution. In addition to the certification, a withdrawal shall be deemed qualified only if:

- a. The financial institution is provided with a copy of an invoice from the higher education institution, and the distribution is made directly to the higher education institution; or
 - b. The financial institution is provided with a copy of an invoice from the higher education institution, and the distribution is made in the form of a check payable to both the designated beneficiary and the higher education institution; or
 - c. Within 30 days following the withdrawal, substantiation that the withdrawal was actually expended for qualified higher education expenses is submitted to the financial institution.
2. **Withdrawal Based on Death, Disability, or Scholarship**
A penalty-free withdrawal may be made as a result of the designated beneficiary's death, disability, or scholarship, if written substantiation thereof is provided. Such written substantiation must come from a party other than the designated beneficiary or the account owner. In the case of a scholarship, the withdrawal may not exceed the amount of the scholarship.
3. **Non-Qualified or Unsubstantiated Withdrawals**
Pursuant to A.R.S. §§ 15-1875 (H), (I), and (J), the Commission has authority to assess penalties for non-qualified withdrawals. If an account holder fails to certify that a withdrawal is qualified or penalty-free, as defined in R7-3-506(B)(1) and (2), above, or if a financial institution has reason to believe that a withdrawal is non-qualified, the financial institution shall withhold from such withdrawal an amount equal to 10% of that portion of that withdrawal which constitutes income under § 72 of the Code. If an account holder seeks to make a withdrawal in accordance with R7-3-506(B)(1)(c) and does not provide the required substantiation at the time of the withdrawal, the withdrawal shall be limited so that the balance remaining in the account is sufficient to pay the 10% of earnings penalty. If the financial institution is not provided with the required substantiation within 30 days, the withdrawal shall be treated as a non-qualified withdrawal, the penalty shall be assessed at that time, and the financial institution shall withdraw the penalty from the account.
- a. If the withdrawal has not been declared, by the party making the withdrawal, to be non-qualified, the amount of any penalty shall be remitted to the Commission with the financial institution's first monthly report following the date that the withdrawal is determined to be non-qualified. If the withdrawal *has* been declared to be non-qualified, the amount of said withholding may be remitted to the Commission with the financial institution's required monthly report.
 - b. If the withdrawal has not been declared, by the party making the withdrawal, to be non-qualified, the financial institution shall report any such withholding, in writing, to the Commission with the financial institutions's first monthly report following the date that the withdrawal is determined to be non-qualified. The report shall include identification of the account holder, beneficiary, date of withdrawal, amount of withdrawal, and a brief description as to why the financial institution believes the withdrawal to be non-qualified. If the withdrawal *has* been declared to be non-qualified, the report may be submitted to the Commission with the financial institution's required monthly report. The financial institution shall notify the account holder and beneficiary, in writing, of any withholding.
 - c. If a qualified withdrawal is made from an account in any calendar year, within 60 days after the end of such year and within 60 days after the end of the following year, any designated beneficiary or account owner who received a partial or total refund from the higher education institution attended by the designated beneficiary or the higher education institution that the designated beneficiary had expected to attend shall provide to the financial institution a signed statement identifying the amount of any refunds received. In addition, the designated beneficiary or account owner shall provide an explanation as to what portion, if any, of the refund is allocable to a qualified withdrawal. If all or a portion of a refund is allocable to a qualified withdrawal, the designated beneficiary (or the account owner) may provide the financial institution with substantiation of qualified higher education expenses for which the refund was used or substantiation that the refund was made by reason of scholarship, or the death, or disability of the designated beneficiary. To the extent that a refund allocable to a qualified withdrawal was not used to pay qualified higher education expenses or made on account of death, disability, or scholarship of the designated beneficiary, it shall be considered a non-qualified withdrawal subject to the penalty described in R7-3-506(B)(3). The financial institution shall withdraw the penalty from the account from which the original qualified withdrawal was made, if sufficient funds are available in the account, or attempt to collect the penalty by billing ~~bill~~ the designated beneficiary or account owner for the penalty, if sufficient funds are not available in the account.
4. **Substantiation Procedures**
Before treating any withdrawal as qualified or penalty-free based on substantiation provided, the financial institution shall review the substantiation to confirm that substantiation is provided for the amount of a withdrawal that the account owner or designated beneficiary asserts is qualified or penalty-free, that the substantiation complies with the program rules, and, in the case of a withdrawal to pay qualified higher education expenses, that the substantiated

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expenditures are of a nature and in amounts that can be treated as qualified higher education expenses. The financial institution may seek additional information from the account owner, the designated beneficiary, or the higher education institution before approving or rejecting substantiation, and the financial institution may seek guidance from staff of the Commission. If the financial institution determines that substantiation is inadequate, it shall promptly notify the account owner and defer making any distribution with respect to any inadequately substantiated request until proper substantiation is provided or the account owner instructs the financial institution to make the requested distribution and either withhold the penalty from the distribution or from other funds in the account.

C. No change.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

1. Sections Affected

R20-4-502
R20-4-506
R20-4-520
R20-4-521
R20-4-532
R20-4-536

Rulemaking Action

Repeal
Repeal
Repeal
Repeal
Repeal
Repeal

2. The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 6-123(2)

Implementing statutes: A.R.S. §§ 6-607, 6-634, 6-636

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 6 A.A.R. 925, March 3, 2000

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: John P. Hudock
Address: 2910 North 44th Street, Suite 310
Phoenix, AZ 85018
Telephone: (602) 255-4421, ext. 167
Fax: (602) 381-1225
E-mail: jhudock@azbanking.com

5. An explanation of the rule, including the agency's reasons for initiating the rule:

These rules regulate the operation of Small Loan Companies. The Department proposes to repeal each of the Sections listed in paragraph 1 of this Notice. The substance of each Section affected by this proposed rulemaking is now contained in a set of statutory revisions added to Arizona Revised Statutes, effective October 1, 1997, by Laws 1997, Ch. 248, § 2. Those revisions are codified at A.R.S. §§ 6-631 through 6-638.

Section R20-4-502 controls the scheduling of the first payment on a precomputed loan. That material is now contained in A.R.S. § 6-634 (A).

R20-4-506 controls the computation of a net unpaid loan balance. That material is now contained in A.R.S. § 6-634 (B).

R20-4-520 requires a licensee to keep a record of any refund or credit given. That material is now contained in A.R.S. § 6-607 (A) and 6-634 (B).

R20-4-521 requires a licensee to note charges on ledger cards. That material is now contained in A.R.S. § 6-607 (A) and 6-634 (B) & (C).

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R20-4-532 requires a licensee to notify the Superintendent when the licensee discontinues operation. That material is now contained in A.R.S. § 6-603 (G).

R20-4-536 regulates minimum charges for insurance on property securing a small loan. That material is now contained in A.R.S. § 6-636.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

The Department does not propose to rely on any study as an evaluator or justification for the proposed rule.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

A. The Banking Department

The Department does not expect to experience any adverse economic impact. It will bear the administrative and human resources cost of this rulemaking. However, the repeal of these rules will not result in any significant cost savings for the Department. It will continue to bear the costs of enforcing the same requirements on its licensees even though the legal authority is now in statute instead of in administrative rules.

B. Other Public Agencies

The state will incur normal publishing costs incident to rulemaking.

C. Private Persons and Businesses Directly Affected

Costs of services will not increase to any measurable degree. Nor should these revisions increase any licensee's cost of doing business in compliance with these rules.

D. Consumers

No measurable effect on consumers is expected.

E. Private and Public Employment

There is no measurable effect on private and public employment.

F. State Revenues

This rulemaking will not change state revenues.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: John P. Hudock
Address: 2910 North 44th Street, Suite 310
Phoenix, Arizona 85018
Telephone: (602) 255-4421, ext. 167
Fax: (602) 381-1225
E-mail: jhudock@azbanking.com

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No oral proceedings are scheduled. The Department will schedule an oral proceeding on the proposed rule if it receives a written request for a proceeding within 30 days after the publication date of this notice, under the provisions of A.R.S. § 41-1023(C). Send requests to the Department personnel listed in this preamble's questions 4 and 9. The Department invites and will accept written comments on the proposed rule or the preliminary economic, small business, and consumer impact statement. Submit comments during regular business hours, at the address listed in this preamble's question 9, until the close of the record for this proposed rulemaking. The record will close on the 31st day following publication of this notice, unless the Department schedules an oral proceeding.

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11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

There is no material incorporated by reference in these rules.

13. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 5. SMALL LOANS

Section

R20-4-502.	<u>First Installment on Precomputed Loans Repealed</u>
R20-4-506.	<u>Computation of Net Unpaid Loan Balance Repealed</u>
R20-4-520.	<u>Record of Refund or Credit Given Repealed</u>
R20-4-521.	<u>Noting Charges on Ledger Card Repealed</u>
R20-4-532.	<u>Report to Superintendent Upon Discontinuance of Operations Repealed</u>
R20-4-536.	<u>Minimum Insurance Premium Charge Repealed</u>

ARTICLE 5. SMALL LOANS

R20-4-502. First Installment on Precomputed Loans—A.R.S. § 6-626 Repealed

The first installment, on precomputed loans, shall be computed in like manner except that if it is adjusted for more or less than one calendar month from the date of the loan, such adjustment shall be on the basis of 1/30th of the precomputed charges for a month for each day involved in such adjustment.

R20-4-506. Computation of Net Unpaid Loan Balance—A.R.S. § 6-626 Repealed

On any precomputed loan prepaid in full by cash or on which a request is made for the net amount thereof for the purpose of making such prepayment, whether by the borrower or any other person authorized by the borrower to make such request and payment, the refund due the borrower as of the date of tendering prepayment shall be deducted from the unpaid balance of the loan and the licensee may receive only the net unpaid balance of the loan.

R20-4-520. Record of Refund or Credit Given—A.R.S. §§ 6-616, 6-621 Repealed

Licensee shall maintain as part of his records evidence of every refund or credit given the borrower for every loan renewed or prepaid.

R20-4-521. Noting Charges on Ledger Card—A.R.S. §§ 6-616, 6-621 Repealed

A notation of all default or extension charges must appear on the face of the borrower's ledger card.

R20-4-532. Report to Superintendent Upon Discontinuance of Operations—A.R.S. § 6-611 Repealed

Upon discontinuance of operations, each licensee shall immediately notify the Superintendent of Banks of such action, and file within 30 days, a report of the activities for the period in which he operated. Sale of assets or outstanding accounts by a licensee shall constitute discontinuance of operations, and the licensee and the purchasing licensee or applicant shall notify the Banking Department fully of such change of operations and file all necessary applications and reports within 30 days of such sale.

R20-4-536. Minimum Insurance Premium Charge—A.R.S. § 6-632 Repealed

If a licensee sells insurance on property securing a loan through an insurance policy or policies which provide for a minimum premium charge:

1. The licensee must extend coverage to the borrower for the full term and amount of insurance to which the minimum charge entitles the borrower regardless of whether the amount of the loan or the lender's loss payable is for a lesser amount or the term of the loan or the lender's loss payable term is for a lesser time.
2. The licensee shall not sell insurance in such a manner as to impose on the borrower avoidable minimum premium charges, as, for example, the selling of two or more minimum premium policies to provide coverage which might have been provided in a single policy. Any such avoidable minimum premium charges shall be considered additional charges under the loan. (Section 6-632, Title 6, Chapter 5, A.R.S.)